



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

July 27, 1995

Ms. Christine T. Rodriguez
Staff Attorney
Legal and Compliance Division, MC 110-1A
Texas Department of Insurance
P.O. Box 149194
Austin, Texas 78714-9104

OR95-711

Dear Ms. Rodriguez:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 32623.

The Texas Department of Insurance (the "department") received an open records request for "all records" relating to an insurance agent named Kevin LeStourgeon. You state that you have provided some information to the requestor. You state that litigation is pending between the department and the particular agent. You contend that section 552.103(a) excepts from required disclosure all of the requested information not yet disclosed. You also contend that some of the requested information includes attorney-client communications that are excepted from required disclosure by section 552.107 of the Government Code. Finally, you contend that some of the requested information includes intra-agency memoranda which would not be available to a party in litigation with the department and that these documents are excepted from required public disclosure by section 552.111 of the Government Code.

Section 552.103(a) applies to information:

(1) relating to litigation of a civil or criminal nature or settlement negotiations, to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party; and

(2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection.

To secure the protection of section 552.103(a), a governmental body must demonstrate that the requested information "relates" to a pending or reasonably anticipated judicial or quasijudicial proceeding. Open Records Decision No. 588 (1991). You have submitted a copy of the final judgment signed by the attorneys for both sides but not yet bearing the trial court's signature in a case styled *Kevin Craig LeSturgeon v. J. Robert Hunter, Commissioner of Insurance*, No. 94-11481. You have also submitted representative samples of the documents you believe are excepted by chapter 552 of the Government Code. Additionally, you state that the attorney responsible for reviewing this matter has determined that the requested information is directly related to the pending litigation.

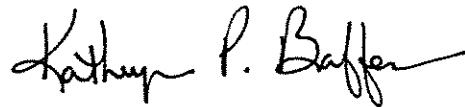
We note that, by the final judgment you submitted to us, the trial court ordered that the case be set aside and the proceedings remanded to the Commissioner of Insurance "for the sole purpose of making additional findings of fact to reflect the requisite intent for proof of a violation" of the Insurance Code. For section 552.103 purposes, litigation continues until time has passed for the agent to appeal from the second set of findings by the commissioner. See Gov't Code § 552.103(b). In this instance you have made the requisite showing that the documents relate to pending litigation for purposes of section 552.103(a). After reviewing the documents, we conclude that you may withhold the submitted documents pursuant to section 552.103(a).

We note that if the opposing party in the litigation has seen or had access to any of the submitted documents there would be no justification for now withholding that information from the requestor pursuant to section 552.103(a). Open Records Decision Nos. 349 (1982), 320 (1982). In addition, the applicability of section 552.103(a) ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision No. 499 (1988), 497 (1988) (where requested documents are numerous and repetitive, governmental body should submit representative sample; but if each record contains substantially different information, all must be submitted). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Since we have determined that the information submitted for our review is excepted from required disclosure by section 552.103(a) of the Government Code, we do not need to address your arguments regarding the 552.107 and 552.111 exceptions under the Open Records Act. We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Kathryn P. Baffes
Assistant Attorney General
Open Government Section

KPB/KHG/rho

Ref: ID# 32623

Enclosures: Submitted documents

cc: Ms. Katherine A. Collie
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(w/o enclosures)